

Favourite Cases: *Re Cathcart*

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Call: 1994

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Reported at [1892] 1 Ch 549 and [1893] 1 Ch 466.

Re Cathcart is one of my favourite cases, although it has a tragedy at its heart. It has a melodramatic plot which could have easily come from a novel by Wilkie Collins, it involves wealth, skulduggery and very bad behaviour, and it reminds us of the way in which Victorian society was so concerned with property rights that the human rights of people who were incapable of making their own decisions were often largely ignored. It is also, remarkably, still relevant, because it is the case which established the unusual general costs rule which applies in Court of Protection property and affairs litigation. That rule, which is now Rule 19.2 of the Court of Protection Rules 2017, provides that ordinarily the costs of all parties to litigation in the Court of Protection concerning the property and affairs of a person ("P") will be paid out of P's estate.

The person at the heart of *Re Cathcart* was Mrs Mary Cathcart. Mary was a very wealthy woman indeed. She had inherited family assets in Staffordshire and Stourbridge and was thought at the time to have a fortune of £1.5m (approximately £142m at today's values). She lived at Wootton Lodge, a grand seventeenth-century country house near Ellastone in Staffordshire.

Mary married her cousin, Mr James Cathcart, in July 1887 after a whirlwind romance, against the advice of her mother. She was substantially older than James. Under their marriage settlement, it was agreed that James would receive Wootton Lodge on her death.

Shortly after the marriage, Mary began to suspect that James was being unfaithful to her, although the law report says "without much reason"; in any event, the couple separated in September 1887.

Mary then made public allegations against James and against the trustees of their marriage settlement alleging that he had deceived her into signing the marriage settlement. In 1881 she had brought a private prosecution against a person who had allegedly written threatening letters to her, and that prosecution had failed; she now

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publicly accused her Counsel in that prosecution, the Rt. Hon. Henry Matthews QC, who had by then become the Home Secretary, of having neglected her interests and of conspiring with her mother to poison her.

On 22 August 1888 James arranged for Mary to be forcibly removed from her bed in a hotel in Ashbourne, driven to Wootton Lodge, and there held against her will. She was forced to undergo medical treatment and to sign documents giving James authority to operate her bank accounts and receive her rents.

In 1889 Mary petitioned for divorce on the grounds of adultery and cruelty (the cruelty being the abduction and forced medical treatment which she had suffered the previous year), but the petition was dismissed.

Mary then distributed placards set in what the law report calls "conspicuous type" alleging that James had interfered with Mary's witnesses. On 24 February 1891 Mary was taken from the steps of the law courts to Roehampton lunatic asylum.

James then began proceedings in the Court of Lunacy to have Mary formally declared a lunatic so that he could take control of her money. Mary defended the claim. The trial took 17 days and leading counsel were briefed on both sides. In the event, Mary persuaded the jury that she was able to manage her property and affairs and James's claim failed. One can only imagine the stress that must have been placed on Mary during this ordeal.

James's costs were £6,000, or about £550,000 at modern values. He could not afford to pay and asked the Court to order that they should be paid out of Mary's estate.

The Court agreed to make that order, although it did make a reduction of one-third to mark its displeasure both over James's "harshness" and "want of judgment" in his treatment of Mary and over the excessive costs which he had incurred. Lindley LJ explained (at p. 558):

"An inquiry into a person's state of mind is not like an ordinary litigation, and whilst, on the one hand, to obtain and prosecute such an inquiry is to inflict a grievous wrong, if there is no justification for it; yet, on the other hand, it may not only be justifiable but right to institute and prosecute such an inquiry, even though the result shall be to establish the sanity of the person whose state of mind has been investigated."

Lindley LJ found that Mary had indeed been insane, even if she was able to manage her property and affairs: "Her views about her mother, about the danger of being poisoned, and about the Home Secretary and the Conservative party were such as only an insane person would entertain". It was reasonable to think she needed to be protected from herself. Her fear of being poisoned might have led to her refusing to eat; and, more to the point, "There was no one to look after her property, and her rents were considerably in arrear". She was also, although the report gives no details, "exposed to the baneful influence of person at least who was aware of and did not scruple to aggravate her suspicions and fears for his own purposes". James had, therefore, acted reasonably in bringing the matter before the Court, and on that basis it was right that he should recover his costs. Mary appealed, but the decision of the first instance court was upheld.

The general costs rule in property and affairs matters is, as it has

been now for some years, under review, since there is a feeling amongst the judiciary and the profession generally that it can encourage parties to engage in self-interested or unnecessary litigation. It remains the law at present, however, and it seems likely that the Court will continue to look favourably on parties who have, in its view, done their best to bring matters before the Court which ought to be decided there, even if they eventually fail to achieve the orders which they originally sought.

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